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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,717	09/26/2001	Minoru Kyoya	1122.65855	9292
7590	06/03/2005			
EXAMINER				
Patrick G. Burns, Esq. GREER, BURNS & CRAIN, LTD. Suite 2500 300 South Wacker Dr. Chicago, IL 60606				
CHU, GABRIEL L				
ART UNIT				
PAPER NUMBER				
2114				
DATE MAILED: 06/03/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/963,717	KYOYA, MINORU	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gabriel L. Chu	2114	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 September 2001.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 26 September 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-4 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-4 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1, 2 claim "A communication control program..." and claims 3, 4 claim "A program recording medium recording a communication control program..." These claims are interpreted as recording a program per se. In order to overcome this rejection, language must be used specifically stating the claim is limited to a "computer program" stored on a "computer readable medium" executing on a computer. Examiner notes that although claims 1, 2 and claims 3, 4 differ in language, both seek the same type of coverage, and neither of the claims correctly claims the subject matter.

### ***Double Patenting***

3. Applicant is advised that should claims 1, 2 be found allowable, claims 3, 4 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof (or vice versa). When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). Examiner notes that in their current form, neither has properly claimed statutory subject matter. Should these claims be written in

proper statutory form, with the same subject matter, these claims (1, 2 and 3, 4) will be duplicates. Examiner suggests canceling one of these sets.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1, 3, 5, 7 rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for "at the same time" (or terms like "concurrently", "in parallel", "contemporaneously", etc...), does not reasonably provide enablement for "substantially the same time". The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. The term "substantially" as used in Applicant's specification does not provide a person of ordinary skill in the art a measure by which to determine the amount of time that is acceptable for the operation of the invention. While it is understood that data sent on a network may incur delays, Applicant has not provided any particular environment in which this invention is implemented so that the scope of the intended "substantially" may be determined. It is not clear if, for example, this "substantially at the same time" may refer to sequentially within the same period or another type of "substantially at the same time" such as a number of physical channels driven simultaneously with identical data.

***Claim Rejections - 35 USC § 102***

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6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5533034 to Kuwata et al. Referring to claims 1, 3, 5, 7, Kuwata discloses a plurality of control means for controlling data communication in a hierarchical configuration (From line 6 of column 1, "This invention relates to a data transfer device having one data transmitter and a plurality of data receivers for receiving a broadcast data transmitted from the data transmitter."); and

data transfer control means for controlling data transfer among the plurality of control means for controlling data communication (From the abstract, "Each of the data receivers notifies an error detection to the data transmitter and the other data receivers via the error signal line with a wired OR connector when its own data receivers detects an error."), wherein the data transfer control means further comprising:

anomaly judgment means for judging whether received data contain an anomaly indication indicating occurrence of an anomalous event (From the abstract, "Each of the data receivers notifies an error detection to the data transmitter and the other data receivers via the error signal line with a wired OR connector when its own data receivers detects an error.");

anomaly setting means for adding, upon detection of the anomaly indication, anomaly information into data to be transferred to the plurality of control means for

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controlling data communication (From the abstract, "Each of the data receivers notifies an error detection to the data transmitter and the other data receivers via the error signal line with a wired OR connector when its own data receivers detects an error."); and

discard instruction means for sending the data containing the added anomaly information at the same time to the plurality of control means for controlling data communication or to the plurality of control means for controlling data communication other than the control means for controlling data communication which has transmitted the data containing the anomaly indication (From line 50 of column 1, "To attain the above object, in this invention, the data transmitter and each data receiver respectively monitor on real time via a single error signal line an error detection in received data in all the data receivers and an error detection in received data in all the other data receivers in order to perform re-transfer per one data at the broadcast transfer.").

8. Referring to claims 2, 4, 6, 8, Kuwata discloses data discarding means for discarding the data containing the anomaly indication and data relating thereto, when the anomaly judgment means detects the anomaly indication (From line 63 of column 1, "In addition, each of the data receivers has functions of discarding the received data and notifying an error detection concurrently to the data transmitter and the other data receivers via the error signal line when an error is detected in the received data, and of discarding the received data when an error detection is notified from any of the other data receivers.").

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 4323966 to Whiteside et al.

US 5291590 to Ohnishi et al.

US 5459725 to Bodner et al.

US 5889940 to Liddell et al.

US 6185698 to Wesley et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabriel L. Chu whose telephone number is (571) 272-3656. The examiner can normally be reached on weekdays between 8:30 AM and 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert W. Beausoliel, Jr. can be reached on (571) 272-3645. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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